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ABSTRACT

This paper examines two issues in telecommunications policy in which the Federal Communications Commission (FCC) has attempted to pursue policies that were distant from the policy desires of their supervising committees in Congress, and in which congressmen made use of various instruments of congressional influence: the FCC's attempt to restructure telephone prices by imposing end-user access charges, and the debate over whether rate of return regulation should be replaced by price cap regulation. It is noted that, in both cases, the agency took a position that was viewed with strong disfavor by Congress. The relationship between Congress and federal agencies is discussed, and the strategies employed by committee members and the FCC in the access charge and price cap regulation cases are analyzed. It is concluded that, while the FCC was forced to reconsider its position and move to a position somewhat more acceptable to congressional committees, it did not have to give up so much ground that Congress had its own way; rather, the outcomes reflected a mix of bureaucratic autonomy and congressional influence. (15 footnotes) (EW)

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Congress and Telecommunications Policy: The Role of Committees

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Introduction

The nature of the relationship between Congress and the bureaucracy is a matter of great controversy among students of American politics. At issue is whether Congress "controls" the bureaucracy. This is a question of interest to students of both Congress and administrative agencies, but it also has repercussions which stretch far beyond the original question, spilling over into areas such as political control and democratic responsiveness. Dodd and Schott recognize this concern:

In our national government, Congress is the only truly elected branch....The historic shift in power toward the executive and away from Congress makes more serious the fact that critical policy decisions are made by administrative officials who are largely hidden from public view, and who gain their jobs through political appointment or technical expertise instead of direct popular appeal. (p. 7)

An understanding of the relationship between these two sets of institutional actors is thus essential for understanding the American political system. One scholar has even identified this as a crucial issue in the "move toward a coherent general theory

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of political institutions."¹

As might be expected, there is an extensive literature examining this relationship. However, no consensus has been reached on the issue of whether Congress actually does control the bureaucracy. One set of studies argues against this claim, pointing to the great deal of discretion possessed by bureaucratic actors and the inability of Congress to overcome institutional roadblocks. Another set of studies, however, reaches an opposite conclusion, claiming that congressional dominance is the most salient feature of the relationship.

According to the first view, Congress may want to control the agencies, but several features militate against any such efforts. Weingast and Moran, discussing this "traditional" approach, identify three such factors.² First, because of their size and the extent of their specialization, the agencies are exposed to far more information and possess more expertise in the issue area. This informational advantage allows agencies to shirk without fear of being caught by Congress. Second, agencies enter into intimate relationships with the interest groups which benefit from the agency's existence. Third, while it is acknowledged that Congress can propose legislation which directly

¹Terry M. Moe, "An Assessment of the Positive Theory of 'Congressional Dominance'," Legislative Studies Quarterly, vol. 12, no. 4 (November, 1987), pp. 475-520.

²Barry R. Weingast and Mark J. Moran, "Bureaucratic Discretion or Congressional Control? Regulatory Policy-Making by the Federal Trade Commission", Journal of Political Economy, vol. 91, no. 5 (1983), pp. 765-800.

affects the agency, such legislation is not costless for congressmen. And because of the high costs involved, passage of such legislation is rare. Bureaucratic actors thus have little to fear from this potential sanction.

These studies often emphasize different factors as primary causes for the inability of Congress to control the bureaucracy. Niskanen, for example, stresses the agency's monopoly over information and the resulting ability to maximize the bureaucratic budget, while Wilson emphasizes how actors at various levels of an agency have different concerns and interests, thus facilitating bureaucratic independence from other influences. Dodd and Schott arrive at the same answer by focusing more on Congress--they blame the incentive structure created by the post-World War II committee system for Congress's inability to control the bureaucracy. However, while the studies may vary in their emphasis, the general thrust of this literature is clear.³ According to this first view, bureaucrats are largely unfettered by congressional desires.

Other scholars, however, have provided a drastically different interpretation of this relationship. Some have simply assumed that control is not problematic and have developed models of the political system which omit any discussion of the bureaucracy.⁴ Others have been more explicit about the

³See Niskanen, Quirk (?), Wilson, Derthick and Quirk, Dodd and Schott.

⁴see Stigler, Peltzman.

congressional-bureaucratic relationship, but have arrived at a similar conclusion--that Congress controls the bureaucracy. According to these studies, Congress relies on a system of incentives to assure themselves of control. They have several tools at their disposal--control over appropriations, oversight hearings, public statements, threats of new legislation, and influence over the appointment of members to the agencies are all commonly mentioned as part of the incentive structure.

Perhaps the most well-known of these studies is the aforementioned Weingast and Moran study of the Federal Trade Commission (FTC). While they acknowledge that certain observations, such as a lack of oversight hearings or policy resolutions, might seem to indicate that Congress does not control the bureaucracy, they argue that these observations are actually consistent with either the congressional dominance or the bureaucratic discretion models. Studying changes in both congressional preferences and agency decisions over time, however, allows one to differentiate between these observationally equivalent explanations. Using this approach, Weingast and Moran perform a quantitative analysis of the congressional-bureaucratic relationship over time and find a causal relationship between the preference of the median committee member and the policy subsequently adopted by the FTC. Their conclusion is unequivocal: Congress controls the FTC.

The Weingast and Moran study, however, has not been the final word on the subject, as other scholars have been critical

of this study and have disagreed with its conclusions. Terry Moe contends, for example, that the mechanisms of control cited by Weingast and Moran are overstated and actually do not affect bureaucrats nearly as much as Weingast and Moran argue. He argues that sanctions are not credible, and bureaucrats should not be expected pay sufficient heed to congressional desires to the point to allow Congress to "control" the bureaucracy. Moe argues that the earlier study simply assumes without explicitly modeling the process, that the mechanisms of congressional influence induce agencies to do what Congress wants.

These and other criticisms need to be taken seriously in a more adequate theory of congressional influence. Models of the relationship between Congress and the bureaucracy have to explain when it is that agencies will be responsive to congressional desires and when agencies will behave in a more autonomous fashion. Weingast and Moran were right to point out that changes in the congressional environment are sometimes reflected in agency policy choices. But we think that Moe is correct in asserting that the Weingast-Moran study does not give an actual account of how or when Congress will be influential.

In this paper we examine two issues in telecommunications policy in which the FCC has attempted to pursue policies that were distant from the policy desires of their supervising committees in Congress, and in which congressmen made use of various instruments of congressional influence. In both of our cases the agency ultimately yielded to congressional preferences

to some degree. But, we argue that the agency was not forced to give up so much ground that Congress got its own way in these areas. Rather, we think that the outcomes reflected a mix of bureaucratic autonomy and congressional influence.

Specifically, we explore the FCC's attempt to restructure telephone prices by imposing end-user access charges. Then after a brief consideration of theoretical concerns, we examine an ongoing issue--the debate over whether rate of return regulation should be replaced by price cap regulation. In both cases the agency struck a position which was viewed with disfavor by Congress. But congressional reaction was strong, and effectively caused the FCC to reconsider their proposal and to move to a position somewhat more acceptable to the congressional committees.

Congress and Telecommunications policy

Telecommunications policy offers an interesting area in which to study the relationship between Congress and an agency. Changes in this area of public policy have long been viewed as driven by agencies, courts, and telecommunications businesses, with Congress passively observing things from the sidelines. Indeed, Congress has not only been viewed as passive, they have been viewed as powerless, mainly because of their inability to pass any significant legislation over the past twenty years, a time of drastic and rapid change in the nature of the industry.

Interestingly, these charges have often come not only from

critics of Congress, but from Congressmen themselves. Ernest Hollings (D.-S.C.), chairman of the Senate Commerce Committee, commented recently that "There is no doubt that we have a runaway animal in the FCC."⁵ Representative Al Swift, discussing FCC broadcast policy, echoed Hollings' frustration:

Congress's policy intent was as clear as could be...The FCC is taking full advantage of the fact that Congress is an extremely powerful, but muscle-bound, giant who sometimes has trouble getting up off its inertia to do anything.⁶

Congress, then, would not seem to have much influence at all in this policy area. Yet despite the complaints of Congress and its critics, we believe that Congress does indeed exert a strong influence on the FCC with regards to telecommunications policy.

We do not assume, nor do we prove, that Congress can "control" the bureaucracy; rather, we argue that Congress is able to exert a strong influence over agency decisions in certain circumstances, by using some of the mechanisms cited by adherents of the theory of congressional dominance. At the heart of this study is the committee system in Congress, and the differences in preferences between the committees and the chamber floors. An important concept, to which we will return to later, is committee reputation. We argue that by building and maintaining reputations, congressional committees may be able to increase their influence over agencies. Finally, although this does not purport to be a model of agency decision-making, it fully allows

⁵CQ 46/9

⁶CQ op cit

for bureaucratic discretion in many cases, as the reader will soon see. Let us now move on to the substantive relationship to be examined--the interaction between Congress and the Federal Communications Commission in the area of telecommunications.

The FCC's Access Charge Decision

The introduction of various forms of competition into the long distance and terminal equipment markets over the past two decades has produced powerful pressures to alter the structure of telephone prices. In particular, both regulatory agencies and telephone companies came to recognize the virtue of recovering the fixed costs of telephone service through fixed end user access charges rather than by recovering these costs by usage charges.

In order to recover the fixed costs of telephone service in an economically efficient manner (and to remove the incentives of large users to bypass the telephone network altogether), the FCC resolved (in Docket 78-72) to move to a pricing scheme that removed the incentive for uneconomic bypass by bring prices into line with the costs of service. Their solution was a two part tariff: charge customers a fixed monthly fee -- an end user access charge -- that reflected the costs of connection to the system, plus a usage based charge which reflected the variable costs of the services they actually used. This system, once in place, would have the effect of reducing the possibilities of cross-subsidization among classes of users.

Two issues complicated this proposed shift in policy. First, to the extent that the introduction of the new scheme would lead to shifting of charges among user groups, these groups could be expected to complain. A second, more important issue arose from the divestiture of AT&T. The DOJ and Judge Greene were at pains to point out that the divestiture itself did not have any necessary connection with how fixed costs were recovered.

If the FCC decided to do so, the traditional cost recovery scheme could be continued,⁷ but then the flows of funds would occur among separate legal entities and be visible to politicians and their constituents. And, if the issue were to get to Congress, the arbitrariness of the traditional arrangements, where rates were averaged in order to subsidize certain customers, would surely become a matter of contention.

In its original access charge proposal, announced in December 1982, the FCC recognized and attempted to resolve some of these difficulties. First, the access charges were set uniformly and did not reflect the actual interconnection costs of particular users allowing high cost users to continue to receive a subsidy (through what was called the Universal Service Fund); second, the access charges were phased in gradually over a six year period so that shifts in rates would be less wrenching;

⁷The traditional method of cost allocation was known as the Separations process and is described in Peter Temin, The Fall of the Bell System: A Study of Prices and Politics, New York: Cambridge University Press, 1987.

third, long distance competitors were not required to pay as much for interconnection as AT&T, although their charges would be greater than under the previous system.

While AT&T, the local operating companies, and many leading economists supported the proposal, consumer groups, state regulators and smaller long distance companies were strongly opposed. During 1982, telephone companies had begun requesting massive rate increases from the state Public Utility Commissions (PUCs). While these requests reflected inflationary cost increases and regulatorily imposed changes in depreciation practices, many state commissions claimed that they also reflected the anticipated effects of the new access charge scheme. Thus, virtually all of the PUCs opposed the FCC's plan in comments before the commission and many appeared before congressional committees to voice their complaints. Moreover, while the new long distance companies supported FCC's general pricing concept, they opposed the actual plan because it offered them less favorable rates than did the continuation of the pre-existing system of interexchange access charges.

Within the first few months of 1983, several bills were introduced before Congress aimed at stalling or modifying the commission proposals. While the congressional proceedings reflected a considerable amount of confusion over the causes of local rate increases, congressmen saw that they might be held responsible for these increases by constituents and so they were motivated to try to keep rates down if they could. One way they

could accomplish this was to try to influence the FCC's access charge plan.

In mid-summer, the Commerce committees of the two chambers held hearings on a variety of legislative proposals. The two plans that took center stage were the bills proposed by Senate Committee Chairman Packwood (R.-Ore.) (S. 1660) and a plan by Representatives Wirth (D.-Colo.) and Dingell (D.-Mich.) (H.R. 3621, later embodied in H.R. 4102). Each of these proposals aimed to stop the FCC from imposing its access charge scheme, and to continue to recover fixed costs from usage charges. Both dealt with the threat of bypass by regulatory means: the Senate bill by simply prohibiting various forms of bypass and the House legislation by directly taxing bypassers to pay for the costs of the local loop. House committee chairman Dingell succinctly stated the central purpose of both proposals: "...as I see the situation, we are preserving the status quo. The shifts of money around the country stemming from allocations of costs between long distance and local service, between different regions, would remain ... substantially the same as they are today."⁸

Just as joint committee hearings got underway, the FCC issued a revision of its original access charge plan, that effectively diminished the magnitude of the charges and made the phase-in more gradual. The tone taken by the congressmen and Senators in the hearings suggest that the agency had not gone

⁸Joint Hearings on The Universal Telephone Service Preservation Act, Serials 98-30, 98-39, p. 155.

nearly far enough. As the hearings proceeded, congressional action seemed increasingly likely. Wirth, Dingell, and Packwood all indicated in the tenor of their questions to witnesses that they expected to be able to get bills to the floors of both chambers by late fall. However, there were significant obstacles in the way of enacting legislation.

The hearings revealed significant congressional concern as to the distributional impact of the bills. Senator Lautenberg emphasized the congressional concerns with distributional issues: "I guess what we are trying to do is to remake by legislation the AT&T system as it existed before, because we are trying to get the parts of the system that were subsidizing local residential service to pay a share of that subsidy again."⁹ Members from low cost-of-service states (New York, New Jersey, Michigan, etc.) wondered why their states should be subsidizing those with higher costs, which were largely located in the sunbelt (Florida, Nevada, Arizona, etc.).¹⁰ Indeed the only successful amendment offered in committee was one proposed by James Florio (D.-N.Y) who proposed an amendment that encouraged the FCC to "deaverage" long distance rates so that urban areas would no longer subsidize rural regions through their phone bills.

⁹Joint Hearings, op cit., p. 149.

¹⁰The redistributional aspects of telephone pricing had been well known by most congressmen all along. What made it controversial in 1983 was the fact that the transfers of funds were published in agency documents and committee hearings and congressmen could henceforward be held accountable for supporting or opposing them.

Following a contentious markup session, the House subcommittee reported H.R. 4102 on 10-5 party line vote, and in late October, after a long partisan dispute in which a number of Republican amendments were defeated, the Commerce committee finally reported the bill to the floor for consideration. While the committee deliberations were proceeding, the FCC tried to diminish the sense of haste by moving to delay the imposition of the access charges for an additional four months. In spite of the internal disagreements and the Commission's revision, the House defeated two partisan attempts to weaken the legislation, and on November 10, H.R. 4102 was passed by a voice vote.

The going was just as tough in the Senate. After initially accepting an amendment by Frank Lautenberg (D.-N. J.), that removed the prohibition on end-user charges and imposed a one year moratorium on the FCC rules instead, the committee reached a compromise that contained a two year moratorium and reported the bill in late October. It was clear, however, that the lack of committee agreement on a legislative vehicle made Senate prospects for successful legislation dim, and the leadership kept S. 1660 off the Senate floor until the 1984, giving Senate leaders time to work on the FCC.

When the Senate postponed floor action, the agency was given a "window" within which it could (again) issue a revised access charge plan in the hope of forestalling legislative correction. On January 16, 1984, it issued a new decision which reduced the charges still further and delayed their implementation until the

middle of 1985. Given the divisions within the Senate, the agency was not forced to capitulate completely: it had only to concede some ground and to delay the impact of its decision so that the urgency of congressional consideration was lost and the matter deferred until after the 1984 congressional elections.

Ten days later, and one day after the FCC reaffirmed its decision to delay the charges, the Senate voted 44-40 not to take up S. 1660, effectively killing it. Chairman Packwood, commenting on the vote, indicated that the reason the bill was defeated was not due to AT&T's massive lobbying effort but to the fact that the FCC had deferred the imposition of the access charges. According to Frank Lautenberg, who proposed substituting the moratorium for Packwood's prohibition on access charges, "I thought our goal all along was to change the commission's course and change it we have."¹¹

Theoretical considerations

The access charge case presents an interesting and rich case of the congressional-bureaucratic interaction. An agency position was staked out, and then modified in response to congressional concerns. Congress, in effect, was able to signal its displeasure with the policy proposal. To gain a better perspective on why such an outcome might have resulted, we turn now to a general case. Starting with a bicameral legislature and perfect information, what might happen?

¹¹Congressional Quarterly Almanac, Vol. XL (1984), p. 282.

If the agency is certain that legislation will be forthcoming, if it knows that Congress has a specific policy in mind and will accept no other outcome, the agency would simply do what Congress most prefers and enact that policy. But in actuality, the committees, who are the key actors, have a range of behavior they will tolerate. If the agency knows the policy preferences of both the committees and the House and Senate floors, it can take these preferences into account when it makes the first move. The goal for the agency is to make a proposal that the committees prefer to the outcome that would result from taking the issue to the floor under an open rule. If the agency operates within that band of activity, the committee has no incentive to bring legislation to the floor. The committees may not see the agency's proposal as an optimal outcome, but they see it as acceptable (i.e., better than the potential floor outcome).

The model becomes much more interesting, and the interactions more subtle, once uncertainty is introduced. For purposes of simplification, assume a unicameral legislature where the preferences of the House floor and the agency are known, but the agency does not know what policy position the committee prefers. The agency will still have a band, or range, of activities which it can undertake without fear of its actions being overpowered by legislation (again, assuming an open rule). However, because the agency does not know the position of the committee, it cannot precisely identify the location of this band.

Consider now two types of committees. A "nice" committee is one that is sympathetic to the preferences of the agency; a "tough" committee, in contrast, prefers the outcome that would result if the issue were taken to the floor. If the agency believes the committee is "nice", then the agency can implement its own preferred proposal (call this "A"), knowing that the committee will not bring legislation to the floor, where a less-preferred outcome may result. If, on the other hand, the agency believes, the committee is "tough", it will not propose A, for the committee, which prefers the floor outcome to A, might then attempt to introduce legislation. Instead of proposing A, the agency will propose something more palatable to the committee, something it believes the committee will prefer to the floor median. In other words, the agency will try to stave off legislation.

The committee, of course, knows that the agency will be acting in this manner, and its behavior reflects this knowledge. In particular, if a committee is nice, and makes this fact known, it risks having policy A implemented--a policy which it finds acceptable, but one which is far from optimal. However, this need not be the case, and in the access charge case, it is not. The way a committee can affect policy is to develop a reputation, for being tougher than it actually is. The agency may suspect that a committee is nice, but in certain circumstances it will be sufficiently unsure of this to warrant undertaking policy A.

Thus, in order to obtain a policy result it prefers to A,

the committee must act in such a way as to convince the agency that it is tough. It can do this by sending various sorts of "signals": excoriating the agency in speeches, holding hearings, proposing legislation, and scheduling legislation for floor consideration. Committee actions will be convincing to agency insofar as they are the kinds of things that a nice committee would not wish to do but which a tough committee would find it worthwhile to undertake. In other words, the signalling activities undertaken by the committee must be known to be costly for the committee to carry out.

The access charge case can be seen as an agency miscalculation or mistake. The agency initially believed that the committee was likely to be "nice" and, as a result, it doubted that the committee would pursue legislative action. Therefore it persisted in pursuing a congressionally unpopular course. In response to this choice, congressmen engaged in a variety of activities aimed at convincing the agency in the end that legislative intervention was likely and that the agency should alter its proposed policy.

Price Cap Regulation¹²

We turn now to a case currently being debated by Congress and the FCC--whether traditional rate of return regulation should be replaced by price cap regulation. In December of 1986, the

¹²This section relies mainly on accounts published in Telecommunications Reports (henceforth referred to as TR).

broad outlines of price cap regulation were drawn by Dennis Patrick, who was at that time a Commissioner in Mark Fowler's FCC. Several months later, when Patrick became chairman of the FCC, the price cap issue moved to the top of the Commission's agenda. Patrick enumerated several potential benefits of this new approach: consumers would be protected both by a price cap and by mechanisms to lower the cap over time; companies would be rewarded for bringing costs down, thus eliminating one of the perverse incentives inherent in rate of return regulation; and the incentive to cross-subsidize unregulated services with regulated ones would be removed. In addition, Patrick promised, the caps could be adjusted over time, taking into account price inflation, gains in productivity, and changes in access charges. Finally, Patrick attempted to assuage the concerns of Congress by stating that the Commission would "continue to maintain the requirement for geographically averaged rates throughout the country".

Over a period of several months the FCC continued to study this issue, and at an August 4, 1988, meeting, the Commissioners unanimously moved to open docket 87-313, a notice of proposed rulemaking to examine the possibility of price cap regulation. Notably, the Commission kept a wary eye out for the opinion of Congress, stressing that price caps did not represent an attempt to deregulate, but rather were simply a better method of

regulation.¹³

Congressional reaction, however, was swift and severe. Despite Commission claims of consumer benefits and technological innovation, members of Congress castigated the proposal, especially for its lack of detail. Dingell was especially sharp in his criticism, characterizing the proposal as a continuation of "the ideological assault on the public interest begun by the previous FCC". He complained further that "Without additional safeguards, [the] proposal would merely allow long distance companies to reap unregulated windfall profits." (TR, 8/10/87). Markey echoed these complaints, viewing the proposal as a "social welfare plan to redistribute the wealth from telephone consumers to telephone company shareholders."

Despite strong opposition from Congress, the FCC forged ahead and continued to solicit comments on how best to implement a price cap approach. In response, Markey and Dingell continued to issue statements criticizing the FCC's approach and proposal, and finally, in early February, two bills were submitted in the Congress--Representative John Bryant (D.-Mass.) offered H.R. 3910, and an identical bill, S. 2044, was submitted in the Senate by John Kerry (D.-Mass.). These bills ordered the FCC to terminate its rulemaking proceeding and disallowed any revision of rate of return regulation until January 1, 1989. The one-page bills further demanded that any new proposal specify exactly how

¹³This theme--that price caps are not simply a move toward further deregulation--is repeated by the FCC almost every time the plan is discussed.

customers would receive "comparable or better service at lower rates than under the current system of regulation."

In addition to threats of legislation, Democrats continued to issue statements attacking the proposal. Both Kerry and Rep. Tauzin (D.-La.) offered comments criticizing the FCC, demanding that the Commission slow down and give detailed consideration to its proposals. Markey furthered fanned the flames by declaring price caps to be the top issue before his subcommittee.

With the pressure from Congress, and the equivocal support from members of the telecommunications community, Patrick finally decided to retreat a bit. He wrote to Congress and agreed to issue a further notice of rulemaking, due in April, which would offer a more specific proposal to which the FCC would solicit further comments. While reaffirming his commitment to the plan, and continuing to stress the benefits it would yield, Patrick also seemed to realize that the docket in its current form was in trouble.

Congressional critics of the proposal were mollified, at least temporarily, and applauded Patrick's "positive response to the intense concern expressed by the public and the Congress with the vague and conceptual proposal."¹⁴ While debate over the plan continued to rage outside of the Congress and the FCC, these two main parties appeared to have reached a temporary cease-fire.

In May, 1988, the Commission unveiled a new, much more detailed plan. According to FCC analyses, the new plan would

¹⁴Markey and Dingell, in TR, 2/22/88, p. 4.

save ratepayers \$1.6 billion over the next four years, partly due to a "consumer productivity dividend", whereby consumers would immediately benefit from any gains in efficiency made by the companies. The plan, to be implemented on April 1, 1989, had several changes, including elective participation for AT&T and the LECs. Specifics filled the proposal, ranging from detailed eligibility requirements for the LECs to specifics about how the price caps would be determined and then adjusted over time.

In Washington, both houses of Congress looked to hold summer hearings on the plan. On the Senate side, the FCC was mildly applauded for having worked out a detailed plan, in response to earlier Congressional desires, and for having apparently taken the interest of consumers into account. Once again, however, the House was not pleased with the outcome--indeed, their response changed little from responses made to earlier versions of the plan. Adding to fears that consumer interests had not been properly addressed was the optional nature of the plan--rather than providing more flexibility, they felt this option would only hurt consumers, as the companies would naturally choose the more profitable option.¹⁵

Perhaps the most telling statements were made by Rep. Mickey Leland (D.-Tex.) in mid-June. Pointing out that only three Commissioners were currently seated on the FCC, and that it was widely rumored that Chairman Patrick would not be around until

¹⁵The Republicans were more amenable to the proposal. Rep. Rinaldo, for example, felt that although the plan would have to be examined in detail, it appeared that consumers would benefit greatly.

the end of the Reagan administration, Leland commented:

I have grave reservations about how successfully a new regulatory scheme can be implemented in the midst of such a transition. It is my view that such an ambitious proposal as price caps should be deferred to the next administration. (TR, 6/27/88).

With time looming ever larger as a limiting variable, and given the prospect of long hearings, the future of the proposal was in doubt. Despite the apparent efforts of the FCC, some members of Congress still were not satisfied.

The hearings held by the House telecommunications subcommittee in mid-July did nothing to encourage proponents of the proposal. Once again, House Democrats, led by subcommittee chairman Markey, harshly criticized the plan. In particular, the short tenure left to the current administration had now become an open issue. Markey, in his opening statement, argued that the proposal raised questions that "cannot be answered in the very few short months left to this administration." His partner in criticism, John Dingell, echoed this complaint, asserting that the FCC was not showing proper respect for due process. Other complaints, all made in previous hearings and other forums, were again trotted out by these and other Democrats.

Patrick fared somewhat better with House Republicans, many of whom noted that the FCC had been responsive to congressional concerns. Some even went to far as to cautiously suggest that Congress should let the FCC proceed. And there was little doubt Patrick still wanted to move forward. He even went so far as to maintain that the Commission had the authority, under the 1934

Communications Act, to proceed, regardless of whether or not Congress gave the expressed approval. Still, at the same time, he seemed to want to further placate critics in Congress, suggesting that if the caps were successful after a few years, prices would be reduced to reflect efficiency, and the productivity factor, a point of contention for many congressmen, would be adjusted beyond the initial 3% setting.

Things might have been easier for Patrick if, in the face of congressional criticism, he had a plan that was approved of by a consensus of the affected parties. However, this was far from the case. Comments to the more detailed notice were not favorable at all. In general, the commenters suggested that the agency seriously re-evaluate the proposal. Many of those parties which had supported price caps in the past were unable to give an unqualified endorsement to this new proposal, and even worse, several groups which had formerly supported the theory of price cap regulation now withdrew their support and suggested that the FCC simply drop the whole idea and work instead to improve the existing system of regulation.

Senate hearings, scheduled for early August, provided yet another public forum for debate over price caps. It is likely that Patrick viewed the Senate as a somewhat more hospitable arena than the House hearings, mainly because the Senate had been relatively quiet about the merits of the issue.

Senator Daniel Inouye (D.- Hawaii) quickly set the tone for the well-attended hearings, and it became apparent that the FCC

would not meet with resounding approval in this arena either. Inouye reminded proponents of price caps of the lesson of subscriber line charges, when Congress was able to first delay access charges, and then cause the fees to be reduced and phased in over time, suggesting that similar pressure would be applied in this case. He also called for more deliberation on the issue, expressing concern that further study needed to be done to prove that price caps would benefit customers and not hurt service quality, and threatened that the Kerry bill (S. 2044) might be acted upon if the FCC did not slow down.¹⁶

Since the hearings, not much has happened. New studies by the OMB and by BellCore have appeared, with the former approving the concept of price caps but arguing that it is not deregulatory enough, and the latter asserting a \$5 billion savings for customers over the next four years. The FCC extended the reply comment deadline, apparently in response to concerns expressed both by commenters and by Congress. Congress has been silent. It appears that certain members of Congress will not be placated by any FCC action short of dropping the entire proposal. Others appear somewhat more amenable to change. The question now becomes one of time. Patrick has continually changed his proposal to address congressional concerns, only to have further hearings and comments criticize the plan even further. Right now

¹⁶There was quite a range of opinion expressed by other Senators, ranging from an assertion that the current rate of return system was working fine (Hollings, D.-S.C.) to a single, outright, enthusiastic endorsement of the proposal (Stevens, R.-Alaska).

the proposal is in a precarious predicament, with not much time remaining for this administration to implement it. As one communication journal observed, the issue is in danger of being jawboned to death. This seems to be exactly what some Congressmen are aiming for.

Discussion

In both of our cases the FCC responded to congressional threats and so, proponents of the congressional dominance theory might be tempted to conclude that Congress, or its committees, got what it wanted. They might go on to claim that these cases are simply instances in which the agency misread the political environment and tried to promulgate a policy that incurred the wrath of its congressional supervisors. Once it recognized the error of its ways, the agency changed course and gave the committees the policy they wanted.

In our model, the agency responds to the committee but it does not end up giving the committee what it wants. Instead, in the case in which information is perfect, the agency adopts a policy that makes the committee indifferent between taking legislation to the floor and allowing the agency to pursue its announced policy. Thus, there is congressional influence but there is not really congressional control. As in the Weingast-Moran model there is a relationship between what the committee wants and agency choices, but the committee is not getting its

preferred outcome.

Moreover, in our model congressional influence is stronger under some conditions than others. When the preferences of the committee members are similar to those of Congress as a whole, the threat to legislatively alter agency policy is more credible and the agency can be expected to choose policies that are more acceptable to the committee (as well as to the Congress as a whole). This implies that agencies which are in the jurisdiction of committees that are relatively representative of their chambers (the House Ways and Means or Appropriations Committees for example) are more likely to adopt policies reflective of the preferences of their committees.

If the president is willing to veto legislative interventions, the conditions for congressional influence are less propitious. In that case the agency need only choose a policy which one third of the members of one of the chambers finds preferable to the legislative outcome if a bill were to be passed. We do not know if or when the president would be willing to stand between the FCC and the Congress; such action might be sufficiently costly to him that he would resort to it only in the most extreme cases.